

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Jamal Damon Hendrix,
Plaintiff(s),

vs.

SpeedeeMart 76 Travel Center Inc, et al.,
Defendant(s).

2:25-cv-00740-CDS-MDC

**ORDER DENYING IFP APPLICATION and
DISMISSING COMPLAINT**

Pending before the Court are plaintiff's *Motion/Application to Proceed In Forma Pauperis* ("IFP application") (ECF No. 1) and Complaint (ECF No. 1-1). For the reasons stated below, the Court DENIES the IFP application without prejudice and DISMISSES the Complaint without prejudice.

DISCUSSION

I. IFP APPLICATION

A. Legal Standard

Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to pay such fees or give security therefor." The Ninth Circuit has recognized that "there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status." *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees, but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

The applicant's affidavit must state the facts regarding the individual's poverty "with some particularity, definiteness and certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed

1 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
2 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he "failed to
3 verify his poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's
4 personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.
5 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in
6 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-
7 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma
8 pauperis application).

9 The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for
10 incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-incarcerated
11 persons. The Long Form requires more detailed information than the Short Form. The court typically
12 does not order an applicant to submit the Long Form unless the Short Form is inadequate, more
13 information is needed, or it appears that the plaintiff is concealing information about his income for
14 determining whether the applicant qualifies for IFP status. When an applicant is specifically ordered to
15 submit the Long Form, the correct form must be submitted, and the applicant must provide all the
16 information requested in the Long Form so that the court is able to make a fact finding regarding the
17 applicant's financial status. See e.g. *Greco v. NYE Cty. Dist. Jude Robert Lane*, No.
18 215CV01370MMDPAL, 2016 WL 7493981, at 3 (D. Nev. Nov. 9, 2016), report and recommendation
19 adopted sub nom. *Greco v. Lake*, No. 215CV001370MMDPAL, 2016 WL 7493963 (D. Nev. Dec. 30,
20 2016).

21 **B. Analysis**

22 The Court finds that it cannot make an accurate determination of whether plaintiff qualifies for
23 IFP status at this time. The Court finds that plaintiff failed to completely answer the IFP application and
24 that there are some inconsistencies in the application.

1 Plaintiff states that his gross pay/wages and take-home pay/wages are \$0, but he makes or
2 received income from “business, profession, or other self-employment.” *ECF No. 1 at 1*. However,
3 plaintiff failed to report the source of money, the amount received, and the amount he expects to receive
4 in the future. *Id.* Because plaintiff failed to provide information on the additional source of income
5 reported, the Court finds that plaintiff failed to fully answer question 3 of his application.

6 Plaintiff reports no money in his checking and/or savings account, assets, or regular monthly
7 expenses. *Id. at 2*. However, plaintiff reports that he pays \$100 a month for child support. *Id.* The Court
8 is unable to determine how plaintiff can make these payments because plaintiff reports neither
9 employment/wages nor information on his other source of income.

10 Plaintiff failed to fully answer the IFP application because there are some inconsistencies in the
11 IFP application. Therefore, the Court denies the IFP application but does so without prejudice. Should
12 plaintiff choose to refile his IFP application, he must file the **long-form** application. Plaintiff must not
13 only fully answer each question, but he must also address deficiencies noted in this Order. Simply
14 answering “N/A” or “Not applicable” is not enough. If there are any changes between plaintiff’s IFP
15 application, plaintiff must also explain those changes. For example, if plaintiff changes the answer to
16 question 3(a) from “yes” to “no,” he must explain those changes. Failure to comply with the Court’s
17 Order may result in a denial of the application.

18 II. COMPLAINT

19 A. Legal Standard

20 When a plaintiff seeks to proceed IFP, the court must screen the complaint or the amended
21 complaint purporting to cure any defects of the original complaint. 28 U.S.C. § 1915(e). Section 1915(e)
22 states that a “court shall dismiss the case at any time if the court determines that (A) the allegations of
23 poverty is untrue; or (B) the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim upon
24 which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such
25 relief.” 28 U.S.C. §§ 1915(e)(2)(A), (B)(i)-(iii). Dismissal for failure to state a claim under § 1915(e)

1 incorporates the same standard for failure to state a claim under Federal Rule of Civil Procedure Rule
2 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) A complaint should be dismissed
3 under Rule 12(b)(6) “if it appears beyond a doubt that the plaintiff can prove no set of facts in support of
4 her claims that would entitle him to relief.” *Buckley v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992).

5 “A document filed pro se is “to be liberally construed” and a pro se complaint, however
6 inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.”
7 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)
8 (internal citations omitted). If the Court dismisses a complaint under § 1915(e), the plaintiff should be
9 given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from
10 the face of the complaint that deficiencies could not be cured through amendment.” *Cato v. United*
11 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (emphasis added).

12 **B. Analysis**

13 Plaintiff asserts a claim for wrongful termination against SpeedeeMart 76 Travel Center Inc. and
14 store manager Charlene Murphy. *See ECF No. 1* (alleging no income due to wrongful termination); *ECF*
15 *No. 1-1* (naming defendants). He brings his claim under 42 U.S.C. § 1983, alleging violations of his
16 First, Eighth, and Fourteenth Amendment rights. *See ECF No. 1-1 at 1*. Plaintiff has failed to state a
17 plausible claim for relief.

18 **a. Color of State Law**

19 The elements of a § 1983 action “have been articulated as: (1) a violation of rights protected by
20 the Constitution or created by federal statute, (2) proximately caused (3) by the conduct of a ‘person’ (4)
21 acting under color of state law.” *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). Or more
22 simply put, plaintiffs are required to “plead that (1) the defendants acting under color of state law (2)
23 deprived plaintiffs of rights secured by the Constitution or federal statutes.” *Gibson v. United States*, 781
24 F.3d 1104, 1114 (9th Cir. 2015). Generally, private parties are not acting under the color of state law.
25 *See Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 1991). However, “private parties may act under

1 color of state law when they perform actions under which the state owes constitutional obligations to
2 those affected.” *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 753 (9th Cir. 2020). In order to
3 bring a § 1983 claim against a private actor, plaintiff must explain how and why the actions of the
4 employees were “under color of law,” which means the employees acted with the appearance of
5 government authority.

6 Plaintiff does not allege that SpeedeeMart 76 Travel Center Inc. and Charlene Murphy are state
7 actors, nor is there any indication of such. Therefore, presumably, neither acts under color of law unless
8 plaintiff can show otherwise. *See Price v. Hawaii*, 939 F.2d at 707-08. Plaintiff alleges that during his
9 employment, he was “told by [Charlene Murphy] to clean with very high concentrated sanitation
10 solution...with rubber gloves.” *ECF No. 1-1 at 3*. Plaintiff allegedly noticed allergic reactions after two
11 weeks of using the chemicals and when he told his store manager of his blistering rashes, he was ordered
12 to continue to work with the cleaning solutions. *Id.* Plaintiff notified his co-workers of the blisters and
13 stated that he would “notify OSHA.” *Id.* His co-workers told Charlene Murphy of plaintiff’s plans. *Id.*
14 Thereafter, Charlene Murphy “called plaintiff to her office” and asked plaintiff about his OSHA
15 statement, which plaintiff confirmed. *Id. at 3-4*. Charlene Murphy then terminated his employment using
16 the “Rule of the Company.” *Id. at 4*. Based on the allegations, the Court finds that plaintiff does not
17 allege facts that show that any of the defendants acted under color of state law, or an act of
18 “governmental compulsion or coercion.” *See Rawson v. Recovery Innovations*, 975 F.3d 742, 748 (9th
19 Cir. 2020). In other words, plaintiff does not show that the state acted through SpeedeeMart 76 Travel
20 Center Inc. and/or Charlene Murphy to violate his Constitutional rights.

21 **b. Rule 8 Notice Pleading**

22 Plaintiff’s Complaint fails to comply with Rule 8 of the Federal Rules of Civil Procedure.
23 Although plaintiff alleges violations of his First, Eighth, and Fourteenth Amendment rights, plaintiff’s
24 claims, as stated in his IFP application appears to allege a claim for “wrongful termination.” Whether
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1 plaintiff alleges “wrongful termination” under state law or federal law is unclear from the face of the
2 Complaint.

3 A properly pled complaint must provide “a short and plain statement of the claim showing that
4 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); see also *Bell Atlantic Corp. v. Twombly*, 550
5 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). This “notice pleading” standard requires
6 plaintiff to “give the defendant fair notice of what the...claim is and the grounds upon which it rests.”
7 *Twombly*, 550 U.S. at 555. “Violations of this Rule warrant dismissal, but there are multiple ways that it
8 can be violated. One well-known type of violation is when a pleading says too little.... The Rule is also
9 violated, though, when a pleading says too much.” *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir.
10 2013) (internal citations omitted); *McHenry v. Renne*, 84 F.3d 1172, 1179-80 (9th Cir. 1996) (“Prolix,
11 confusing complaints such as the ones plaintiffs filed in this case impose unfair burdens on litigants and
12 judges.”).

13 The Supreme Court in *Erickson* requires “[a] document filed *pro se*...be liberally construed” and
14 a pro se complaint, however inartfully pleaded held to less stringent standards than formal pleadings
15 drafted by lawyers.” *Erickson*, 551 U.S. at 94. However, “[c]ourts are not required to conjure allegations
16 on behalf of pro se filers.” *Coney v. Lozo*, 2024 U.S. Dist. LEXIS 89865, at *5 (D. Nev. May 20, 2024)
17 (internal citations omitted). In other words, “[t]he courts cannot assume the role of advocates and create
18 arguments never made.” *Donahue v. United States*, 660 F.3d 523, 524 (1st Cir. 2011); see also *Jacobsen*
19 *v. Filler*, 790 F.2d 1362, 1364-66 (9th Cir. 1986)); *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir.
20 1993) (“[A] federal court is not required to construct legal arguments for a pro se petitioner.”).

21 Because it is unclear whether plaintiff intends to allege constitutional violations under 42 U.S.C.
22 § 1983 or seeks to pursue a claim for wrongful termination, the Court finds dismissal is warranted.
23 Should plaintiff seek to pursue a § 1983 claim, then he must amend his Complaint to show that
24 defendants acted under the color of state law. However, if plaintiff seeks to allege a wrongful
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1 termination claim against defendants, may amend his Complaint to allege a cause of action under federal
2 law. Otherwise, plaintiff should file his wrongful termination claim in state court.

3 **III. CONCLUSION**

4 Plaintiff's IFP application is incomplete and contains inconsistencies. Plaintiff failed to answer
5 the second part of question 3. Furthermore, it is unclear from the IFP application how plaintiff maintains
6 his child support payment when he reports no wages and provides no information about his additional
7 income. Therefore, the Court denies the IFP application, but does so without prejudice and with leave to
8 refile.

9 Plaintiff has also failed to state a plausible claim for relief. Plaintiff failed to show that
10 defendants acted under color of state law, a necessary component of a § 1983 claim. Furthermore,
11 plaintiff's Complaint reads more as a wrongful termination claim. However, it is unclear whether
12 plaintiff seeks to allege such a claim under federal or state law, if at all. Therefore, the Court dismisses
13 the Complaint, but does so without prejudice and with leave to amend.

14
15 ACCORDINGLY,

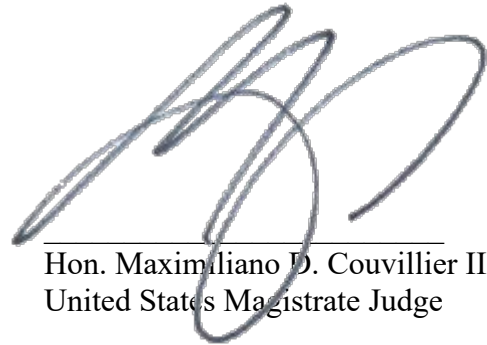
16 **IT IS ORDERED that:**

- 17 1. The IFP application (ECF No. 1) is DENIED without prejudice.
- 18 2. If plaintiff chooses to refile his IFP application, he must file the **long-form** application by no
19 later than **June 26, 2025**.
- 20 3. The Complaint (ECF No. 1-1) is DISMISSED without prejudice and with leave to refile.
- 21 4. If Plaintiff chooses to file an amended complaint curing the deficiencies of his Complaint as
22 outlined in this order, he must file the amended complaint by no later than **June 26, 2025**.
- 23 5. The Clerk of the Court is kindly directed to send to Plaintiff the approved forms for filing a §
24 1983 complaint and a civil complaint, instructions for the same, and a copy of his original
25 complaint (ECF No. 1-1), and this Order.

- 1 6. If Plaintiff chooses to file an amended complaint, he must use the approved form and write
2 the words "First Amended" in the caption.
3 7. Failure to timely comply with this Order may result in a recommendation that this case be
4 dismissed.

5 DATED this 27th day of May 2025.

6 IT IS SO ORDERED.


Hon. Maximiliano D. Couvillier III
United States Magistrate Judge

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11 **NOTICE**

12 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
13 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
14 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
15 may determine that an appeal has been waived due to the failure to file objections within the specified
16 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

17 This circuit has also held that (1) failure to file objections within the specified time and (2)
18 failure to properly address and brief the objectionable issues waives the right to appeal the District
19 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
20 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
21 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any
22 change of address. The notification must include proof of service upon each opposing party's attorney,
23 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may
24 result in dismissal of the action.
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